

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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|--------------------------|---|---------------------------|
| MELVIN JONES, JR., |) | 1:05-cv-0148 OWW DLB |
| |) | |
| Plaintiff, |) | ORDER AFTER SCHEDULING |
| |) | CONFERENCE |
| v. |) | |
| |) | Further Scheduling |
| JOHN J. HOLLENBACK, JR., |) | Conference Date: 11/18/05 |
| |) | 8:45 Ctrm. 2 |
| Defendant. |) | |
| |) | |
| |) | |

I. Date of Scheduling Conference.

September 9, 2005.

II. Appearances Of Counsel.

Plaintiff appeared in propria persona.

Leslie F. Jensen, Esq., appeared on behalf of Defendant.

III. Summary of Pleadings.

1. Defendant Hollenback has violated Plaintiff's civil rights in contravention of 42 U.S.C. § 1981 by depriving him access to the judicial system on account of his race and ethnicity.

2. As of 8/26/05 Plaintiff has not received response from Defendant Hollenback.

3. As of 8/26/05 Plaintiff has not received Answer (in

1 accordance with F.R.C.P. Rule 8) to Amended Complaint filed on
2 7/6/05.

3 4. Defendant Hollenback denies that the racist statements
4 attributed to him were ever made, although he has acknowledged
5 telling Plaintiff (in open court) that he intended to obtain a
6 child support order that would rattle his (Mr. Jones' teeth).
7 Contrary to what is claimed in the Amended Complaint, this
8 statement contained no reference to Mr. Jones' race or ethnicity,
9 and it expressed nothing more than antipathy for the fact that
10 Mr. Jones was (and is) a "deadbeat dad" who would go to heroic
11 lengths to avoid supporting his child.

12 5. Defendant Hollenback further denies that any statement
13 made by him had the effect of dissuading Mr. Jones to drop the
14 contempt action that he had pending in the Stanislaus County
15 Superior Court. Shortly before the contempt charges were due to
16 be heard in that court, Mr. Jones filed a document under oath in
17 which he withdrew the contempt charges "without prejudice."
18 Chief among the reasons for this withdrawal was the need for a
19 proper investigation of complaints that Mr. Jones had filed
20 against various Stanislaus County judges. These complaints had
21 been lodged with the California Commission on Judicial
22 Performance. As Plaintiff sets forth in the sworn statement
23 regarding his dismissal of the pending contempt charges, he
24 simply did not want to go to trial in a forum that he considered
25 overwhelmingly biased against him.

26 6. Defendant Hollenback further contends that, as a matter
27 of law, the acts charged against him do not give rise to
28 liability under 42 U.S.C. § 1981(c), in that such acts do not

1 amount to "discrimination" on the part of this Defendant.

2 7. Defendant Hollenback further contends that even if
3 Plaintiff were subjected to the acts and statements which appear
4 in the Amended Complaint, Plaintiff did not suffer any cognizable
5 damages. Plaintiff has not alleged that he had a meritorious
6 case with respect to the underlying contempts, or that he
7 suffered any damages by reason of voluntarily dismissing those
8 contempt allegations.

9 8. Defendant Hollenback further contends that Plaintiff
10 should be sanctioned pursuant to Fed. R. Civ. P. 11 for having
11 filed a false lawsuit against this Defendant.

12 IV. Orders Re Amendments To Pleadings.

13 1. The Plaintiff does not anticipate filing any amendments
14 to the pleadings at this time.

15 2. Defendant Hollenback has moved to dismiss the Amended
16 Complaint for failure to state a claim under Fed. R. Civ. P.
17 12(b)(6). Defendant anticipates that this motion will be
18 granted. The court has previously afforded Plaintiff one (1)
19 opportunity to amend his pleadings following the court's earlier
20 granting of a dismissal motion. Assuming that Defendant
21 Hollenback's dismissal motion is again granted, the court should
22 deny further leave to amend.

23 3. Defendant Hollenback has also moved to strike a number
24 of paragraphs from the Amended Complaint pursuant to Fed. R. Civ.
25 P. 12(f). Assuming that this motion is granted, but the
26 dismissal motion is denied, the court may well direct Plaintiff
27 to file a further amended complaint to "clean up" his existing
28 pleading.

V. Factual Summary.

A. Admitted Facts Which Are Deemed Proven Without Further Proceedings.

1. Plaintiff Melvin Jones, Jr., is a citizen of the United States.

2. Defendant John Hollenback, Jr., is an attorney licensed to practice law in the State of California.

3. Defendant Hollenback acted as an attorney for Kea Chahay in a family law dispute in the Stanislaus County Superior Court during late 2003 and into mid-2004.

4. Defendant Hollenback is a private attorney retained to provide legal services to Ms. Chahay in the Stanislaus County Superior Court case and is not an officer or employee of Stanislaus County Superior Court or any other governmental agency.

5. Plaintiff Melvin Jones, in the family law cases in Stanislaus County Superior Court, disagreed with rulings of the Court and appointment of certain professionals related to child custody issues which led to two federal lawsuits: 1) this case; and 2) a related case entitled *Jones v. Strangio*.

6. Mr. Jones initiated a series of contempt proceedings against Ms. Chahay, including proceedings to be heard in the Superior Court of California, County of Stanislaus on May 10, 2004.

B. Contested Facts.

1. All remaining issues of fact are contested.

VI. Legal Issues.

A. Uncontested.

1. Jurisdiction in this case is disputed.

2. If jurisdiction exists, venue s proper under 28
U.S.C. § 1391.

B. Contested.

1. All remaining legal issues are disputed.

VII. Consent to Magistrate Judge Jurisdiction.

1. The parties have not consented to transfer the
case to the Magistrate Judge for all purposes, including trial.

VIII. Corporate Identification Statement.

1. Any nongovernmental corporate party to any action in
this court shall file a statement identifying all its parent
corporations and listing any entity that owns 10% or more of the
party's equity securities. A party shall file the statement with
its initial pleading filed in this court and shall supplement the
statement within a reasonable time of any change in the
information.

IX. Further Scheduling Conference.

1. A further scheduling conference will be held in this
case on November 18, 2005, at 8:45 a.m. in Courtroom 2 before the
Honorable Oliver W. Wanger.

DATED: September 9, 2005.

/s/ OLIVER W. WANGER

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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